

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	WC Docket No. 07-245
Implementation of Section 224 of the Act	)	
	)	GN Docket No. 09-51
National Broadband Plan	)	
	)	

**Comments of NTELOS, Inc.**

NTELOS Inc., on behalf of itself and its operating subsidiaries, hereby submits its comments in the above-captioned proceeding.

**INTRODUCTION**

As a growing regional wireless and wireline carrier, NTELOS depends on both a smoothly-flowing, fair process to obtain access to space on utility poles, and reasonable rates of pole rental in order to effectively meet customers' demands. In the fast-paced broadband market, NTELOS suffers when long-delayed make-ready work has caused it to lose potential customers who simply cannot wait out the cumbersome process. Faced with pole rental rates in its ILEC

service areas that are significantly higher than the rates utilities charge other providers, NTELOS' efforts to ubiquitously deploy broadband services in these rural areas are stymied.

The FCC's proposed changes to the rates and procedures governing access to utility poles in its *Further Notice of Proposed Rulemaking*<sup>1</sup> are a helpful step forward; however, much remains to be done in order to ensure that carriers have access to utility pole attachment on a truly open, non-discriminatory basis.

As proposed, the FCC's make-ready timeline is a welcome improvement to a process that frequently enters a protracted "holding pattern" that can stretch for months or even years as pole owner and existing-attacher intransigence, confusion and miscommunication push back project work indefinitely. However, by creating, in effect, an inflexible, fixed schedule for all make-ready projects, the Commission's timeline also threatens to delay smaller projects for which the entire length of the FCC's proposed timeline is not necessary, doing little, especially given the extremely long, 148-day timeline the Commission proposes, to truly ensure all carriers have timely, non-discriminatory access to utility poles.

NTELOS also applauds the Commission's efforts to amend its treatment of pole rental rates in order to minimize the distorting effect of unequal rates on different classes of attachers. However, the Commission still proposes to leave unchanged the regulatory status of ILEC pole rental rates, failing to fully make good on its attempts to bring parity to the market. This is especially a burden to smaller incumbent carriers like NTELOS. It is our customers who suffer when small ILECs are forced to pay rates well in excess of the equitable norm.

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<sup>1</sup> FCC 10-84, GN 09-51, "FNPRM"

To address these issues, NTELOS urges the Commission to alter the rules it proposes in this docket by adding measures that more fully address the needs of non-pole-owning carriers. These should include a more rapid, flexible deadline system for pole attachment make-ready work that encourages pole owners to expeditiously act on all pole attachment requests by mandating that 70% of all make-ready projects be completed within 70 days of the submission of attachment applications, as well as regulations to rationalize the rates and terms under which attaching parties lease space on existing poles by modifying the method under which pole rental rates are calculated under Section 224 of the Communications Act to result in rates that are maximally uniform.

## **I. NTELOS**

Founded in 1897 as Clifton Forge-Waynesboro Telephone Company, NTELOS provides competitive telephone and data services to business and residential customers across Virginia, West Virginia, and portions of Pennsylvania, Maryland, Kentucky, and Ohio, and operates two RLEC carriers in rural Virginia, supported by a 4500 mile fiber-optic network. That fiber network also serves as the backbone of NTELOS' regional EV-DO 3G wireless network, which provides mobile voice and data services to over 440,000 subscribers under the NTELOS Wireless postpay and Frawg prepay brands.

As part of its ongoing efforts to increase broadband availability throughout its service area and create opportunities for expansion of IP-enabled services, including high-speed Internet access, integrated voice/data access technology, metro Ethernet, and IPTV, NTELOS announced in July 2010 that it was in the process of acquiring FiberNet, LLC, a West Virginia network

operator whose optical network will add another 3500 route-miles to NTELOS' network and extend NTELOS' broadband services to more areas than ever.

## **II. ADDITIONAL REGULATIONS ARE NEEDED TO ENSURE THE COMPETITIVE, TIMELY DEPLOYMENT OF BROADBAND INFRASTRUCTURE**

While NTELOS' fiber optic network means that NTELOS facilities are often within a few miles of a potential customer, NTELOS is unable to build to customer premises "on spec". Consequently, in its competitive carrier business, NTELOS relies on first obtaining contracts to provide service to business customers for data and voice services. In order to be able to offer a competitively priced service within a reasonable lead time, NTELOS must be able to make arrangements as quickly as possible once the contract is signed to provide these customers with service over company-owned facilities, attached to poles owned by utilities and large ILECs. NTELOS' customers typically expect preparation times measured in weeks. In many cases, however, protracted pole attachment negotiations and make-ready periods have led to preparation times measured in months, even years.

A characteristic example is the make-ready process for a fiber route, planned to run through Princeton, West Virginia to reach a Frontier Communications collocation site, which NTELOS began in November of 2009. Despite NTELOS' efforts to negotiate and coordinate with the pole owners, AEP and Frontier, the project quickly became plagued by miscommunication, uncertainty over pole ownership and location, as well as simple lack of motivation on the part of pole owners and existing attachers, in the absence of regulatory guidelines to inform the path of the process.

As of this writing, the project remains incomplete, caught in limbo between the completion of the make-ready work estimate and the beginning of make-ready work, a delay of 8 months and counting. As the Commission has itself noted,<sup>2</sup> the extant record in this proceeding is studded with similar accounts of pole attachment projects which have stretched to many times their originally planned lengths, resulting in loss of customers, and in some cases, forming significant barriers to entry in certain regional markets. It is NTELOS' hope that the Commission's proposed timeline, once in effect, will help to reduce the incidence of more egregious cases like the one above. Nonetheless, the Commission's proposed make-ready timeline retains serious deficiencies.

### **III. THE PROPOSED TIMELINE DOES NOT FULLY ADDRESS THE NEEDS OF ATTACHING PARTIES**

NTELOS agrees wholeheartedly with the Commission's choice to include a specific timeline in its standards for non-discriminatory access to poles that holds pole owners and attachers accountable to ensure that pole make-ready work projects do not continue to be protracted and expensive. Yet the proposed rules compromise too much by creating an inflexible system that, while it promises to rein in the most clearly abusive behaviors by pole owners and existing attachers towards new, prospective attachers, does little towards actually accomplishing the Commission's stated goal of easing and speeding deployment of new broadband infrastructure by increasing access to standing utility poles.

While, indeed, somewhat shorter than many of the multi-month make-ready periods that NTELOS and other commenters have endured, the proposed timeline is still too long, given the

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<sup>2</sup> FNPRM at 14

Commission's avowed intent to expedite the pole attachment process to the extent possible. Even given that under the Commission's proposed scheme, attaching parties will be permitted to withhold 50% of the pole-owner's estimated make-ready charges as an incentive for speedy completion, the proposed timeline will still do little to encourage pole owners and existing attachers to expedite their competitors' infrastructure installation. Instead, the incentive will remain for pole-owners to take the timeline as the maximum that any make-ready process can be delayed, and hence will become, for new attachers, the *minimum* term of any make-ready project, regardless of the size of the proposed project. The "stages" attached to the timeline will only exacerbate the problem by adding extra time periods for the completion of processes that should be included as part of long single steps—45 days for surveying plus an extra 14 for the actual production of a cost estimate, for example, or 45 days for "performance" plus an extra 30 for multiparty coordination.

By adding time to the clock in this way, the Commission encourages each stage to be slowed to the maximum extent allowable, regardless of whether or not the actual situation should encourage some processes to be expedited or slowed to accommodate exceptionally large or small projects. The Commission's deadlines will encourage delays such that all engineering reports are received after 45 days and no sooner, all cost analyses will arrive at the close of business exactly 14 days later, the "performance" stage will invariably be followed by the "optional" multiparty coordination phase, and the overall process will take at minimum (since, for very large projects the actual performance phase may in fact be too short) 148 days, a span of 5 months, and still well beyond a time frame that truly allows competitive entrants to successfully attract customers to whose premises they will have to deploy new infrastructure on others' poles.

**IV. A FLEXIBLE, “70% IN 70 DAYS OR LESS” STANDARD WOULD  
ENCOURAGE RAPID COMPLETION OF MAKE-READY WHILE  
ACCOMMODATING LARGE PROJECTS**

NTELOS proposes a flexible standard that comfortably accommodates extremely large projects, for which a rigid deadline may not be feasible, while still applying pressure to pole-owners and attachers to complete their make-ready obligations as quickly as possible. That standard would require pole owners to show that they had completed all requests for feasibility surveys in less than 30 days, while completing 70% of the resulting make-ready projects within an overall total of 70 days. This flexible standard, additionally incentivized by a completion-based payment plan, would allow unusually large requests to take the time required to safely prepare for large installation projects, while encouraging all make-ready to be completed as quickly as possible.

If the Commission elects to retain its proposed standard, however, NTELOS recommends that at minimum, it should simplify and shorten the timeline, combining the estimate and survey phases into a single 45-day period, as is presently the industry standard practice. The FCC should also strongly emphasize existing attachers’ shared obligation to cooperate with utilities in moving their facilities when required to do so by new attaching parties during the first performance phase, not the final multiparty coordination phase. In the event that after the full 148 day deadline has passed, make-ready has not been fully completed, the Commission should also oblige attachers to employ utility-approved contractors to temporarily attach their facilities until permanent placement can be made.

## **V. THE FCC SHOULD TAKE STEPS TO ENSURE THAT POLE ATTACHMENT RATES ARE UNIFORM FOR ALL ATTACHERS, INCLUDING ILECS**

NTELOS applauds the Commission's proposed rate adjustment, which takes important steps towards eliminating the current distortive pole rental rate regime by permitting pole owners to charge the higher of the current cable rate and a revised telecommunications rate. In continuing to exempt ILECs from the definition of "telecommunications carrier", however, the Commission puzzlingly chooses to leave rental rates unequal for many attachers, including NTELOS, where as an ILEC, it is frequently subjected to rates an order of magnitude higher than those in its competitive territories. This omission, in light of the Commission's emphasis elsewhere regarding rate parity, is surprising, and NTELOS urges the Commission to reconsider. Though ILECs may make joint pole-use agreements and often own poles, the decision to omit ILECs from pole-rate regulation presently permits pole owners to charge rates that would, except for the attachers' ILEC status, would not be considered "just and reasonable". Because many rural ILECs are truly carriers of last resort in bringing broadband to rural customers, this disparity in treatment has real and negative consequences for broadband deployment.

## **VI. CONCLUSION**

The present *FNPRM* takes important steps towards assuring uniform rental rates and prompt access to millions of utility poles nationwide for broadband providers of all descriptions; however, it remains incomplete with respect to fully meeting the needs of attaching parties like NTELOS, who will still face long delays in make-ready work, and high rates for rental in areas



they serve as ILECs. It is NTELOS' hope that the Commission will implement a flexible make-ready deadline system, and amend its reading of the Communications Act to extend to *all* attaching parties its "just and reasonable rates" protections in order to guarantee all attaching parties fully non-discriminatory access to the utility poles they need.

Respectfully submitted,

NTELOS Inc.

By: David W. Ranzini

Mary McDermott  
David W. Ranzini  
NTELOS  
401 Spring Lane, Suite 300  
Waynesboro, VA 22980  
(540) 946-8677  
[mcdermottm@ntelos.com](mailto:mcdermottm@ntelos.com)

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